

Sumter City-County Board of Zoning Appeals

January 11, 2012

BOA-11-26, 1091 Broad St. (City)

A variance from the commercial flag specifications as outlined in Article 8 of the City Zoning Ordinance.



Appeals - Variance - Special Exception

Sumter City-County Board of Appeals

January 11, 2012

BOA-11-26, 1091 Broad St. (City)

I. THE REQUEST

Applicant: Samuel McLeod

Status of the Applicants: Manager, Sonic Restaurant #3964

Request: Applicant is requesting a variance from Article 8, Section 8.i.10 Flags for commercial businesses to allow multiple flags on top of restaurant.

Location: 1091 Broad St. in Sumter

Present Use/Zoning: Commercial / General Commercial (GC) / Highway Corridor Protection District (HCPD)

Tax Map Reference: #203-13-03-002

II. BACKGROUND

The applicant manages Sonic Restaurant #3964, located at 1091 Broad St., shown in the photos below:



The restaurant has been in business since 2000 at this location. The applicant placed two American flags and nine “Open 24 Hours” flags (3 x 5) on the roof of the establishment recently, for promotional purposes and to attract customers.

The location is zoned General Commercial (GC) and is located in the Highway Corridor Protection District (HCPD).

III. THE REQUEST

The applicant seeks a variance from Article 8.i.10 of the City of Sumter Zoning Ordinance, Flag Poles and Flags, to allow the flags to remain on the top of the structure as shown in the photos above at least for 3 months out of the year.

Article 8.i.10. Flags poles and Flags states:

b. Except as otherwise provided herein, flags shall be displayed on flagpoles. Such poles in all zoning districts shall not exceed the allowed building height of the zoning district. Flagpoles may not be placed on top of buildings unless they are located in the CBD Zoning District. A permit for a flagpole not exceeding 150 percent of the district height limitation may be granted by the Board of Zoning Appeals as a special exception. Two flags per lot may be displayed by hanging or painting on the exterior of a structure in addition to flags permitted on flagpoles. No permits or fees are required for flags.

e. A maximum of nine (9) flagpole flags may be displayed on one lot. Not more than three (3) flags may be displayed per pole with not more than three (3) flagpoles on one lot. No permit or fee is required. A flag displaying a logo, message, statement, or expression relating to commercial interests is subject to all applicable sign regulations and fees.

Based on the above mentioned ordinance language, the applicant could lawfully place the flags on display on this property using up to three flag poles, so long as they are properly permitted and do not exceed the maximum allowed square footage for the parcel, and as long as the flagpoles meet height restrictions for this zoning district. This parcel is allowed by the City Sign Ordinance a maximum square footage of 157 sqft. This includes freestanding and building signage. This business already has a freestanding business identification sign with 126 sqft leaving this zoning parcel with 31 sqft of signage. Applicant can use the remaining 31 sqft with commercial flags (2 flags measuring 3 x 5) as long as he can meet the Flag Ordinance Regulations which means placing on flagpoles, meeting required setbacks and flag dimensions proportionate to pole height which is 20%. The American Flags are not counted as part of the maximum sqft of signage allowed on this zoning parcel but they have to also be displayed on a flagpole and meet setbacks per Ordinance.

IV. FOUR-PART TEST

In order to grant this size variance, the request must meet all parts of a State mandated four-part test. When reviewing a variance request, the Board may not grant a variance that would do the following:

- Allow the establishment of a use not otherwise permitted in a zoning district;
- Extend physically a nonconforming use of land;
- Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.

The fact that a property may be utilized more profitably should a variance be granted shall not be considered grounds for approving a variance request.

- 1. There are extraordinary and exceptional conditions pertaining to the particular piece of property.***

There are no extraordinary conditions pertaining to this property. It is a commercial parcel of similar size and shape to the adjacent parcels in this district.

2. *These conditions do not generally apply to other property in the vicinity.*

All of the commercial properties along this area of Broad St. are of similar size and are held to the same ordinance restrictions for flag locations.

3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

Application of the ordinance and denial of the variance would necessitate removal of the flags on top of the restaurant. This would not prohibit or unreasonably restrict use of the property. There is an existing business with a business identification sign. Applicant can still place two commercial flags and the two American Flags on property as long as he complies with the Flag Ordinance.

4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.*

Granting the variance sets a precedent for other businesses along a major commercial corridor to place flags on the roof of their structures as well. This would ultimately harm the character and intent of the Highway Corridor Overlay District.

V. STAFF RECOMMENDATION

In accordance with Article 1, section 1.h.4.b.2.a, the board may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district. As stated previously in this report, section 8.i.10.b, the only zoning district that allows flags to be located on top of the building is within the CBD.

Applicant also has other options for signage such as place two commercial flags (max 31 sq.f.t) and the two American Flags on flag poles as long as he complies with Flag Ordinance.

Staff recommends denial of BOA-11-26.

VI. DRAFT MOTIONS for BOA-11-26

- A. I move that the Zoning Board of Appeals approve BOA-11-26, subject to the findings of fact and conclusions attached as Exhibit I.
- B. I move that the Zoning Board of Appeals deny BOA-11-26 subject to the following findings of fact and conclusions.
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-11-26.

VII. ZONING BOARD OF APPEALS – JANUARY 11, 2012

The Sumter City-County Zoning Board of Appeals at its meeting on Wednesday, January 11, 2012, voted to defer this request so that the applicant and staff can meet to discuss options.

VIII. ZONING BOARD OF APPEALS – FEBRUARY 8, 2012

BOA-11-26 was withdrawn by the applicant on 1-25-12. This request will not return to the Zoning Board of Appeals.

Exhibit 1
Order on Variance Application
Sumter Board of Appeals

BOA-11-26, 1091 Broad St. (City)
January 11, 2012

Date Filed: January 11, 2012

Permit Case No. BOA-11-26

The Sumter Board of Appeals held a public hearing on Wednesday, January 11, 2012 to consider the appeal of Samuel McLeod; 1091 Broad St, Sumter SC 29150 for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant ☐ **has** - ☒ **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

There are no extraordinary conditions pertaining to this property. It is a commercial parcel of similar size and shape to the adjacent parcels in this district.

2. The Board concludes that these conditions ☒ **do** - ☐ **do not** generally apply to other property in the vicinity based on the following findings of fact:

All of the commercial properties along this area of Broad St. are of similar size and are held to the same ordinance restrictions for flag location.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☐ **would** - ☒ **would not** effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

Application of the ordinance and denial of the variance would necessitate removal of the flags on top of the restaurant. This would not prohibit or unreasonably restrict use of the property. There is an ongoing business and freestanding business identification sign on property. Applicant has other options for signage such as placing 2 of the commercial flags and the two American flags on flag poles and complying with Flag Ordinance.

4. The Board concludes that authorization of the variance ☒ **will** - ☐ **will not** be of substantial detriment to adjacent property or to the public good, and the character of the district ☒ **will** - ☐ **will not** be harmed by the granting of the variance based on the following findings of fact:

Granting the variance sets a precedent for other businesses along a major commercial corridor such as Broad St., to place flags on the roof of their structures as well. This would ultimately harm the character and intent of the Highway Corridor overlay District.

THE BOARD, THEREFORE, ORDERS that the variance is ☒ **DENIED** – ☐ **GRANTED**,
subject to the following conditions:

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.